JD(SF)–55–04
Ontario, California

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO DIVISION OF JUDGES

TOWER INDUSTRIES, INC.
d/b/a ALLIED MECHANICAL

and **Cases 31-CA-26605**
31-CA-26644
UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC **31-CA-26666**

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Robert J. Stock, Esq., of Los Angeles, California, Counsel for the Charging Party
Steven D. Atkinson, Esq., of Los Angeles, California, for Respondent

DECISION

Statement of the Case

Mary Miller Cracraft, Administrative Law Judge: At issue is whether Tower Industries, Inc. d/b/a Allied Mechanical (Respondent)[1] violated Section 8(a)(1), (3), and (4) of the National Labor Relations Act (the Act)[2] by denying a transfer to the night shift, issuing a written warning, denying overtime, suspending, and discharging employee Marcello Pinheiro and by issuing written discipline to employee Edwin Shook because Pinheiro and Shook assisted United Steel Workers of America, AFL-CIO-CLC (the Union), and because Pinheiro and Shook took part in a representation hearing and an unfair labor practice hearing before the NLRB. Also at issue are allegations that Respondent violated Section 8(a)(1) of the Act by making an implied threat of relocation and an implied inducement to forego Union support, and by telling an employee that its conduct was discriminatorily motivated.

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[1] Although Respondent claimed at trial and in its brief that its correct legal name was "Allied Mechanical, Inc.," no documentary or testimonial evidence was adduced to support this claim. Thus, Respondent's name will remain as set forth in the consolidated complaint.

[2] Sec. 8(a)(1) of the National Labor Relations Act (the Act), 29 U.S.C. §158(a)(1), provides that it shall be an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7, "which secures the rights of employees, inter alia, "to self-organization, to form, join, or assist labor organizations, to bargain collectively . . . [and] to refrain from any or all such activities . . . ." Sec. 8(a)(3) of the Act, 29 U.S.C. § 158(a)(3), provides, inter alia, that discrimination which encourages or discourages membership in a labor organization is an unfair labor practice; and Sec. 8(a)(4) of the Act, 29 U.S.C. §158(a)(4), prohibits discharge or discrimination against an employee because he files charges or gives testimony under the Act.

On the entire record,[3] including my observation of the demeanor of the witnesses,[4] and after considering the briefs filed by counsel for the General Counsel and counsel for the Respondent, I make the following

Findings of Fact

I. Jurisdiction and Labor Organization Status

Respondent is a California corporation engaged in manufacturing machined parts. It maintains its principal place of business in Ontario, California. During calendar year 2003, Respondent purchased and received goods, supplies, and materials valued in excess of $50,000 directly from sources located outside the State of California. Respondent admits and I find that it is an employer within the meaning of Section 2(2), (6), and (7) of the Act. Respondent admits and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Unfair Labor Practices

A. Background

Respondent specializes in medium to large precision machining at its shop in Ontario, California. It also performs assembly and fabrication. Richard Mark Slater (Slater) assumed the position of president of Respondent on January 1, 2003. Prior to that time, he served for seven years as vice president and general manager. Dave Bechtol is production manager. Miguel Sedano is day shift supervisor. All are admitted to be supervisor and agents within the meaning of Section 2(11) and 2(13) of the Act.

On January 24, the Union filed a petition in Case 31-RC-8202 seeking to represent a unit of employees as follows:

> All full-time and regular part-time production, maintenance, shipping and receiving employees and programmers employed by Respondent at its facility located at 1720 Bon View, Ontario, California.

On March 6, an election was conducted among these employees. The tally of ballots indicated 37 votes in favor of representation and 42 votes against representation. The Union's timely filed objections were consolidated with unfair labor practice charges. On December 19, Administrative Law Judge Lana H. Parke found that Respondent had commited various unfair labor practices. Additionally, she sustained various of the objections and, finally, she

[3] Trial was in Los Angeles, California, on April 12, 13, and 14, 2004. All charges were filed by the Union, as follows: The charge and amended charge in Case 31-CA-26605 on December 11, 2003 and January 5, 2004, respectively; the charge in Case 31-CA-26644 on January 9, 2004; the charge in Case 31-CA-26666 on February 3, 2004. The consolidated complaint issued on February 24, 2004. All dates are in 2003 unless otherwise specified.

[4] Credibility resolutions have been made based upon witness demeanor, the weight of respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole. Testimony contrary to my findings has been discredited on some occasions because it was in conflict with credited testimony or documents or because it was inherently incredible and unworthy of belief.

recommended a bargaining order pursuant to *NLRB v. Gissel Packing Co.,* 395 U.S. 575, 610 (1969). JD(SF)-93-03 at p. 15-16. Judge Parke's decision is currently pending review before the NLRB on Respondent's exceptions to that decision.

B. Alleged Unlawful Activity Regarding Pinheiro

1. Pinheiro's Employment Background and His Union Activity

Pinheiro began his employment with Respondent in roughly April 2002 as a CNC (computer numeric control) mill machinist. He worked on the night shift, operating a 5-Axis Cincinnati and a Toshiba.

Pinheiro's overall performance review for the period September 3, 2002, through December 2, 2002, was good. However, his attitude was rated as "poor." Pinheiro agreed that during this review period, on one occasion, he told another employee that he would "kick his ass" if the employee caused Pinheiro to lose his job by reporting false information to management. This incident was listed as the reason for the "poor" attitude rating. Pinheiro was given this performance review in early February.

Regarding the event leading to the "poor" attitude rating, Respondent's president Mark Slater testified that he had been told that Pinheiro threatened to kill another employee over an unpaid debt. Slater determined to discharge Pinheiro due to this event. However, his production manager and his program manager begged Slater not to discharge Pinheiro because Respondent would be unable to deliver badly needed parts to a customer.

In any event, Pinheiro was not discharged in 2002 and in January 2003, Pinheiro became a supporter of the Union. Pinheiro passed out Union flyers from 5 a.m. to 6 a.m. in the driveway shortly after the petition for representation was filed on January 24. In the course of this activity, Pinheiro gave a Union flyer to day shift supervisor Miguel Sedano, the man who hired Pinheiro.

In addition, Pinheiro spoke to Eddie Rogers, night shift supervisor, in January. Pinheiro told Rogers that he was engaged in the Union campaign but intended to conduct himself in a professional manner. Rogers indicated that he had no problem with Pinheiro and said he was a good worker.

2. Matters Presented to Judge Parke

Pinheiro placed Union leaflets on the wall by the supervisor's window where other flyers were customarily posted and by the bathroom wall and on the tool crib window. Other flyers were posted in these areas advertising videotapes for sale, computers for sale, hockey tickets for sale, and similar items. Pinheiro noticed that the flyers were always taken down. Pinheiro spoke to both Rogers and Sedano on January 31 and asked them to leave the Union flyers posted. Pinheiro threatened that he would have to "put a charge on Sedano" for tearing down the flyers. Sedano opined that the flyers were posted on private property and Respondent could do whatever it wanted to do on private property. Sedano agreed. He testified that his position to

Pinheiro was that he believed the company could do what it wished with the Union flyers. This evidence warrants a finding that Respondent harbored animus to the employees' Union efforts and specifically to Pinheiro's Union activity.[5]

All parties agree that a discrepancy report is created for any error made while machining a part. Discrepancy reports do not always reflect machinist error.

Before removing a part from the machine table, each machinist must determine that the piece is completely machined and then must call an inspector to certify that the part has been made as specified. On January 28, before removing a part from the Toshiba table, Pinheiro inspected it and thought it was completed. He then called inspector Jerry Belton to inspect the part. Belton certified that the part was completely machined. Then Pinheiro removed the part from the machine table.

On January 31, a few hours after Pinheiro had spoken with Sedano and Rogers about removal of Union flyers, Pinheiro was called back to Sedano's office. Inspector Belton was present. Pinheiro was given a disciplinary action notice for removing the part on January 28 without completing serration on one of the seal faces. Pinheiro agreed that one of the faces was missing the required serrations. Belton admitted to Sedano that he "bought off the part." Belton was given a verbal warning, according to Sedano.

The defective part was returned to Pinheiro, he reloaded it on the table, and machined the missing feature. The part was not scrapped and Respondent did not miss the required time targets for that job. Production manager Dave Bechtol testified that he recommended that Pinheiro be disciplined for this incident because additional time to load, unload, and clean the machine was involved. This could have been an additional 4 hours to reload and 3 to 4 hours to take the part off and clean the machine at a cost of $75 per hour. However, these figures were not actual but conjectured. The actual time it took to rectify the missing serration is not present in the record.

This evidence supports a finding that Respondent harbored animus to Pinheiro's Union activities. Given Pinheiro's open and active Union support, Respondent's animus toward Pinheiro's Union activity, the timing of issuance of this disciplinary action notice to Pinheiro just after he challenged Respondent's removal of Union flyers, and failure to accord the same discipline to the inspector, I find that this disciplinary report was not issued because of the error but because of Pinheiro's support for the Union.[6]

Pinheiro served as an observer for the Union during both sessions of the March 6 election proceeding. On March 25, Pinheiro was called into the office of production manager Dave Bechtol and given a disciplinary action notice for excessive discrepancies and quality problems within a 6-month period. Production manager Dave Bechtol ordered the write up due to the quantity of discrepancy reports and so that Pinheiro would understand that he needed to do a better job. The jobs referenced in the disciplinary action notice were numbers 6864 on February 14, 6907 on March 14, and 6914 on March 19. One of these discrepancies was later

[5] Judge Parke found that Respondent's removal of Union flyers violated Sec. 8(a)(1) of the Act. JD(SF)-93-03.

[6] Judge Parke found that this disciplinary action notice was given to Pinheiro not because of the error but because of Pinheiro's vigorous support of the Union. JD(SF)-93-03 at p. 13.

withdrawn after Bechtol investigated the matter. However, the disciplinary action notice was not withdrawn. Once again, this evidence supports a finding of animus toward Pinheiro and his Union activity.[7]

Pinheiro was laid off on April 8, 2003, and, based on Respondent's records, recalled on July 23, 2003, to work on the day shift as a floater. Respondent's president Mark Slater testified that employees who are laid off are not automatically subject to recall. However, Pinheiro was recalled from this layoff because he was an active Union supporter and Slater felt that Pinheiro and other active Union supporters should be recalled from layoff "to keep our self out of trouble."[8]

3. Denial of Transfer to the Night Shift

a. Facts

Following his recall, Pinheiro testified that he initially worked on a Cincinnati 5-Axis to replace Cedric Parlow, an operator who was on vacation for two weeks. Respondent's records contradict Pinheiro's assertion. These records indicate that Pinheiro worked on other machines when recalled. Pinheiro explained that such record discrepancies exist because sometimes a supervisor instructs the employee to log onto one machine but work on another. In any event, both the records and Pinheiro agree that he was shifted from machine to machine on the day shift, as needed. Production manager Dave Bechtol told Pinheiro that he wanted him in the floater position because he felt Pinheiro was doing well in that position. Bechtol testified that he needed someone he could move around when people were on vacation or when hot jobs came up.

In late July or early August, Pinheiro learned that there was an opening on the evening shift on the Cincinnati 5-Axis. Pinheiro spoke initially to Miguel Sedano, his supervisor, and told Sedano that he wanted to be considered for the evening shift position on the 5-Axis. Sedano said he would check on the matter and get back to Pinheiro. When Sedano did not report any news to Pinheiro, Pinheiro met with production manager Dave Bechtol in early August. Pinheiro told Bechtol that because he was originally hired on the evening shift for the 5-Axis, he would like to be considered for that vacancy. Ed Shook, at that time a maintenance mechanic, accompanied Pinheiro to this meeting with Bechtol. Bechtol said he would look into the matter and get back to Pinheiro.

Bechtol thought he spoke with Pinheiro about the night shift after someone had already been hired on the night shift. Bechtol believed he simply told Pinheiro that there were no openings. I credit Pinheiro and Shook that the conversation occurred prior to Respondent's filling the night shift position. The new hire first appeared on the payroll during the week of September 2. Moreover, Bechtol was not certain that the conversation was after filling the position or before filling it. Pinheiro and Shook were certain there was still a vacancy pending at the time of the conversation and both recalled the conversation in early August. I credit Pinheiro

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[7] Judge Parke found that the March 25 disciplinary action notice was given for pretextual reasons and that, in fact, the discipline was imposed because of Pinheiro's Union activity. JD(SF)-93-03 at p. 14.

[8] Judge Parke found that Pinheiro's selection for layoff was not in retaliation for his Union activities. JD(SF)-93-03 at p. 14. It is unnecessary for me to make a determination regarding this event.

and Shook because of the certainty of their testimony and because the matter was certainly of more importance to them. Moreover, I note that Shook is currently a member of management but corroborated Pinheiro's version of the conversation.

About a week after his conversation with Bechtol, Pinheiro heard that someone else had been hired for the 5-Axis on evening shift. Pinheiro met with president Mark Slater and told Slater that he was disappointed that he had not been considered for the evening shift 5-Axis position. Pinheiro emphasized that he had the required experience. Slater responded, according to Pinheiro, that Pinheiro was less trouble on the day shift. Pinheiro asked Slater to define "trouble." Slater responded that Pinheiro was more productive on day shift. Pinheiro argued that he never had any bad production reports on the evening shift. Pinheiro opined that Slater was just keeping him on day shift to keep him "under his thumb" and thought this was due to Pinheiro's Union activity.

According to Slater, the meeting proceeded differently. Pinheiro came into Slater's office and stated that he wanted to go onto the night shift and run the 5-Axis. Slater told Pinheiro that Respondent had already hired someone else. Slater discussed Pinheiro staying on the day shift as a floater and Pinheiro agreed that he liked the day shift and "that worked for him." Slater also told Pinheiro that he would keep his desire to return to the night shift in mind if anything else opened up. Slater further recalled telling Pinheiro that he had been recalled to the day shift because he had a poor quality record and could use the extra support from the day shift. Based upon their relative demeanors, where their recollections are in conflict, I credit Pinheiro's version of this conversation.

b. Analysis

In all cases turning on employer motivation, causation is determined pursuant to *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (lst Cir. 1981), cert. denied 455 U.S. 989 (1982). Initially, the General Counsel must prove, by a preponderance of the evidence, that protected conduct was a "motivating factor" in the employer's decision. To establish this, the General Counsel must adduce evidence of protected activity, Respondent's knowledge of the protected activity, Respondent's animus toward the protected activity, and a link or nexus between the protected activity and the adverse employment action. *Farmer Bros. Co.,* 303 NLRB 638, 649 (1991). If the General Counsel makes this initial showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the employee's union activity. *American Gardens Management Co.,* 338 NLRB No. 76, slip opinion at 2 (Nov. 22, 2002), citing *Taylor & Gaskin, Inc.,* 277 NLRB 563 n.2 (1985), both incorporating *Wright Line*, *supra.*

Certainly, the General Counsel has shown that Pinheiro was actively involved in Union activity, that Respondent was aware of Pinheiro's Union activity, and that Respondent harbored animus toward Pinheiro's Union activity.[9] Evidence of animus is established by Sedano telling Pinheiro Respondent could do whatever it wanted with the Union flyers, and Respondent's discriminatorily issued written disciplinary reports to Pinheiro. A link or nexus between Pinheiro's Union activity and denial of transfer to the night shift also exists. For instance, president Slater testified that Pinheiro was recalled from layoff simply to keep Respondent out of further litigation. Similarly, I have found that Slater told Pinheiro that Pinheiro was less trouble on the

[9] Any reference to documents not in the record will be disregarded. General Counsel's motion to strike Respondent's brief is granted. Moreover, no adverse inference may be drawn by Pinheiro's voluntary production of a notebook one day later than he had promised.

day shift. Having found that the General Counsel established that Pinheiro's Union activity was a motivating factor in Respondent's refusal to transfer Pinheiro to the night shift, Respondent must demonstrate that the same action would have taken place even in the absence of Pinheiro's Union activity, including his testimony before the NLRB.

Initially, I note that night shift supervisor Sedano testified that he told production manager Bechtol that Pinheiro should not be transferred to the night shift because Pinheiro did not perform well on the 5-Axis prior to his layoff. Bechtol did not specifically corroborate this testimony. However, Respondent's managers generally testified that although Pinheiro could competently operate the 5-Axis, he could not complete set up work for the machine. This was the reason he was not transferred to the night shift to run the 5-Axis. Nevertheless, Respondent hired a machinist to run the 5-Axis on night shift who had no history of set up on that machine and he was discharged for inability to perform the set up work. Accordingly, the reason for denying Pinheiro the night shift is pretextual. Based upon this evidence, I find that Respondent's denial of transfer to the night shift would not have occurred in the absence of Pinheiro's Union and NLRB activity. A preponderance of the credible evidence supports a finding that by denying Pinheiro a transfer to the night shift, Respondent violated Section 8(a)(1), (3), and (4) of the Act.

4. Written Discipline

a. Facts

On September 5, Pinheiro received a disciplinary write up for three discrepancy reports. The first discrepancy, according to Pinheiro, was for placing an extra "spot" on a part. The report states there was an extra "hole." In any event, Pinheiro explained that on August 21, he programmed the new rotary index table incorrectly. Nevertheless, his supervisor approved his program. While spotting the second hole, Pinheiro realized that the program was incorrect because the machine automatically used decimal points while his program did not. Pinheiro stopped the machine and called this to his supervisor's attention, made the correction, and completed the part. The discrepancy report also contains a notation that Pinheiro has been instructed to spot at a depth of .020 inches. Pinheiro stated that this instruction was not on the discrepancy report when he saw it and his spot was deeper than .020 inches.

The second discrepancy report was for a job run on August 27. Pinheiro agreed that he made a mistake that day. He signed the discrepancy report. The third discrepancy report was for a job on August 28. Pinheiro explained that on that day he took his part, an end cap, to the office and requested that the proper program for that part be routed to his machine. The wrong program was sent and Pinheiro did not discover the problem until the part was completed. According to Pinheiro, it was not possible to know whether the correct program was sent until after the part was completed. Respondent did not dispute this.

Discrepancy reports are completed each time there is a deviation from customer specifications. The fact that a discrepancy report is written does not automatically mean there has been an error by the machinist. Marisela Rodriguez, human resources administrator,[10] explained that there are no hard and fast rules regarding the number of discrepancy reports an employee must get before he receives a write up. Similarly, there are no "rules of thumb" regarding how many write ups an employee may receive before being terminated. In the case of the discrepancy reports supporting the September 5 write up, Pinheiro believed that the first and

[10] Rodriguez is an admitted supervisor and agent within the meaning of Sec. 2(11) and (13) of the Act.

third reports cited mistakes not attributable to him. At the meeting with Bechtol on September 5, Pinheiro accused Bechtol of trying to build a file to justify his discharge because of his Union activity. Bechtol protested that he was simply trying to eliminate mistakes. President Slater testified that he recommended this disciplinary action notice because Pinheiro's quality was atrocious.

b. Analysis

Given Pinheiro's Union activity, Respondent's knowledge of the activity, and animus toward the activity, the first three elements of the *Wright Line* analysis are satisfied. I find a link or nexus between the activity, knowledge, and animus, on the one hand, and the issuance of the disciplinary action notice, on the other hand, based upon the pretextual nature of the stated reasons for the discipline. Thus, both Pinheiro and Sedano were at fault in the programming of the rotary index table. Pinheiro had never programmed this machine before and consulted with his supervisor before operating the machine. Similarly, Pinheiro requested the correct program for the end cap but received a different program. Both he and the programmer were at fault. Although Respondent may issue disciplinary action reports for only one discrepancy, there is no evidence that the remaining discrepancy of August 27 was of such a nature as to warrant a disciplinary action report. Given the pretextual nature of the reasons for discipline, it follows that Respondent would not have issued the disciplinary action notice in any event. See, *Sodexho Marriott Services, Inc.,* 335 NLRB 538, n. 6 (2001). Accordingly, I conclude that a preponderance of the credible evidence supports a finding that Respondent violated Section 8(a)(1), (3), and (4) of the Act by issuing Pinheiro the September 5 displinary notice.

5. Denial of Overtime

a. Facts

On September 9, Pinheiro testified before Judge Parke. On September 10, a discrepancy report issued for work performed by Pinheiro. Production manager Bechtol recommended that Pinheiro be disciplined for this discrepancy. However, a disciplinary action notice dated September 17 was never issued to Pinheiro, on the advice of counsel, because the unfair labor practice hearing, held before Judge Parke on September 8-12, was in process.

Pinheiro testified he repeatedly asked supervisor Sedano for more hours. He usually made this request on payday. Sedano did not recall Pinheiro requesting overtime. In any event, for the week September 29 to October 3, Pinheiro was scheduled to work five 10-hour days. Thus, work on Friday, October 3, was overtime work. However, when Pinheiro reported on Friday, October 3, for overtime work, according to Pinheiro, his supervisor told him that he wasn't scheduled. Pinheiro testified that on Friday, October 3, he saw another employee, Stewart Davies, working on the machine he thought he was supposed to use. Pinheiro clocked out and went home. Respondent's timecards do not indicate that either Pinheiro or Davies clocked in on Friday, October 3.

Sedano explained that when Pinheiro came in on Friday, October 3, Pinheiro asked Sedano whether he was supposed to work that day. Sedano told Pinheiro to look at the schedule. Pinheiro looked at the schedule and came back to Sedano and said he was not scheduled to work and he was going home. Sedano assumed that Pinheiro was correct. However, later, when Sedano looked at the posted schedule, Sedano saw that it was for the week of October 6-10. Apparently, Pinheiro did not notice he was looking at the wrong schedule

when he came in on Friday, October 3. Pinheiro looked at the schedule for the week of October 6 and saw that Pinheiro was supposed to work four 10-hour days. Thus, Pinheiro went home mistakenly, according to Sedano.

Dave Bechtol testified that he moved Davies to the Mitsui Seiki on September 30 because the machine Davies was running, the Union, broke and because Davies was more familiar with the Mitsui Seiki and Pinheiro was a floater. Sedano agreed that Davies had more experience on the Mitsui Seiki and more overall seniority. Sedano testified that Davies did not work on Friday, October 3, because there was insufficient work. I credit Bechtol's testimony and find that Davies was moved to the Mitsui Seiki mid-week and that Davies had more experience on the Mitsui Seiki than Pinheiro. I credit Sedano's testimony that Davies did not work on October 3. His testimony is supported by Respondent's records.

Respondent notes that Pinheiro was scheduled to work overtime for six of the twelve weeks following his recall from layoff, for a total of 554 hours. However, Respondent's assertion continues, Pinheiro's time cards show that he worked only 438.70 hours in the twelve weeks. This is somewhat misleading because Pinheiro actually worked only 10 full weeks. He returned from layoff mid-week and he was suspended pending investigation mid-week. Respondent's figures include these weeks when Pinheiro did not work a full week. I will disregard Respondent's figures for that reason.

In the 10 full weeks of his post-recall employment, Pinheiro was scheduled for overtime 5 weeks and not scheduled, 5 weeks. Thus he was scheduled for overtime 50 percent of the time. His total hours scheduled were 450 hours in 10 weeks. During this 10-week period, Pinheiro worked about 415 hours. If he had worked every hour that he was scheduled to work, less 2 days he did not work his scheduled 8 hours because he was present and testified before the NLRB, he could have worked 434 hours. Complete attendance records for each employee were not introduced but Pinheiro, at least, worked about 96% of his scheduled hours.

The vast majority of employees were scheduled for overtime 100 percent of the time during the same 10 weeks. Pinheiro was the only employee of the five who were laid off in April who was recalled in July. One other of these five, Rusalin Manea, was recalled in September and scheduled for overtime the first five of the seven weeks following his return.

b. Analysis

The first three weeks that Pinheiro worked after his recall from layoff were 40-hour weeks. In contrast, the first four weeks that Manea worked after his recall from layoff were overtime weeks. After Pinheiro's first three weeks of recall, he was scheduled to work overtime five of the seven remaining weeks. One of his two 40-hour weeks during his last seven weeks was the week of the NLRB hearing before Judge Parke.

Pursuant to the *Wright Line* analysis, I find that General Counsel has sustained its initial burden. Penheiro's Union and NLRB activity, Respondent's knowledge of this activity, and Respondent's animus to this activity have already been discussed. A link or nexus exists in that the only other recalled employee immediately undertook substantial overtime. Thus, Pinheiro was treated disparately. Moreover, the vast majority of employees were constantly scheduled for overtime. Respondent has failed to show that it would have taken the same action in any event. Thus I find that a preponderance of the credible evidence supports a finding that Respondent violated Section 8(a)(1), (3), and (4) of the Act by denying overtime to Pinheiro.

6. Suspension and Discharge

a. Facts

On Monday, October 6, Pinheiro clocked in and saw his supervisor Miguel Sedano going into his office. Pinheiro walked over to the office door and asked Sedano why every time he had a job requiring overtime, he was taken off the job and someone else got the overtime. Sedano responded that Davies got the overtime on that job because Davies was more senior. Pinheiro responded, "Since when [has] seniority . . . ever played any role in who you give overtime to in this company?" Sedano responded, "Since all this union thing and we got into such trouble with the Labor Board, that now they're going to have to start going by the Employee Handbook."[11] Pinheiro started to walk away, putting his face in his hands, and then said, "suck dick, what does a guy have to do to get a fair shake around here?" According to Pinheiro, machinists Israel de La Rosa and Sergio Barragan were present at this time. Pinheiro thought he was around 9 feet from Sedano when he said this.

Sedano recalled that Pinheiro walked into his office and asked why Rusalin Manea had run the Takumi on Friday night. Sedano explained that they had run out of work for Manea on Friday night so he used Manea as back up on the Takumi. Sedano also recalled that Pinheiro asked why Stuart Davies was put on the Mitsui Seiki and Sedano explained that Davies had a year and half experience on the machine, more than Pinheiro, Sedano knew that Davies was better on the machine than Pinheiro, and Sedano had used seniority as well because "the labor board [was] after us." Sedano testified that Pinheiro then said that was "bull shit" and "suck my dick" and walked out.

Sergio Barragan, another CNC machinist, overheard Pinheiro's remark to Sedano. Barragan was about to walk into Sedano's office when he overheard Pinheiro say something about Respondent never using seniority. Pinheiro may have used the term "bull shit" regarding Sedano's assertion that Davies got the overtime because Davies was more senior. Then Pinheiro turned around, began walking out of Sedano's office, said, "suck dick," and then bumped into Barragan at the door. Pinheiro continued walking out and Barragan walked in, laughing at Pinheiro's remark. Barragan was followed by Milad Murad. Sedano said, "There goes your leader." Barragan protested that Pinheiro was not his leader. Barragan heard Pinheiro use the phrase "suck dick" on a daily basis. According to Barragan, normal shoptalk involves profanity.

In any event, Pinheiro began his work. Sedano approached a few minutes later and told Pinheiro that his comment was very disrespectful. Sedano said Pinheiro "had told him to suck his dick." Pinheiro protested that he never said that. Rather, he said, "suck dick" to himself, out of frustration. Pinheiro apologized for his comment. Sedano confirmed that Pinheiro apologized.

According to Pinheiro, language among the machinists and their supervisors is not particularly refined. Maintenance supervisor Edwin Shook confirmed that profanity is frequently used in the shop. He recalled on one occasion that Jose L. Rodriguez spoke to Tom Bechtol, quality control manager,[12] and said, "fuck you, mother fucker." Shook recalled that Rodriguez wore a "Vote No" T-shirt during the Union campaign. The profanity that Shook has heard in the

[11] General Counsel alleges that this remark violated Sec. 8(a)(1). This allegation will be discussed *infra*.

[12] Tom Bechtol is an admitted supervisor and agent of Respondent within the meaning of Sec. 2(11) and 2(13) of the Act.

shop has always been stated in a joking manner rather than in an angry manner. Production manager Dave Bechtol also agreed that profanity in the shop is common among employees and management.

Murad Murad, CNC lead man, was warming up an Ikeiga machine about 30 feet from Miguel Sedano's office shortly before 6 a.m. on the morning of October 6. His brother Milad Murad walked through the aisle and the two were discussing their weekend activities when a discussion began between Sedano and Pinheiro in the aisle about 10 to 15 feet from him. Both Sedano and Pinheiro spoke in elevated voices. Pinheiro asked Sedano why he was taken off the Mitsui Seiki and Davies put on it. Pinheiro thought he was denied overtime on the Mitsui Seiki. Sedano replied that Davies had more seniority and experience on that machine. Sedano continued, "That is what seniority is. Don't you want the seniority?" The conversation moved into Sedano's office at that point and Murad Murad was unable to hear anything further until Pinheiro emerged from the office and said, "My lawyer is going to be hearing about this." Then Pinheiro told Murad Murad that he had told Sedano to "suck my dick."

Milad Murad, lead machinist, recalled that Pinheiro said, "I cannot take that shit. I want to call my lawyer." Pinheiro questioned Sedano about why someone else worked on his machine and got overtime on the previous Friday. Sedano explained that he had utilized seniority. Milad Murad did not hear Pinheiro use any profanity. Milad Murad described Pinheiro as screaming and Sedano as calm. Later, in the lunchroom, Milad Murad heard Pinheiro tell other employees that he had told Sedano, "suck dick."

Sedano, Pinheiro, Berragan, Murad Murad, and Milad Murad, by implication, all agree that Pinheiro's comment, either "suck dick" or "suck my dick" was spoken in the confines of Sedano's office. I find that the comment at issue was made in Sedano's office. It is immaterial whether the comment was as Pinheiro and Berragan assert, "suck dick" or whether it was a Murad Murad and Sedano assert, "suck my dick." What is relevant is whether the remark was made in anger directly to Sedano, or in frustration, as a comment regarding Pinheiro's feelings. I find the later to be the case. Pinheiro and Berragan convincingly testified regarding the manner in which the expletive phrase was delivered. Sedano's testimony on this point was vague and is not credited. Moreover, Pinheiro apologized to Sedano after explaining that he had not made a comment directed to Sedano but, rather, a comment of frustration over his belief that he was not receiving as much overtime as he deserved.

Human resources manager Marisela Rodriguez was instructed by Slater to conduct an investigation of the Sedano/Pinheiro incident of October 6. Rodriguez interviewed Sedano and received a copy of Sedano's notes about the incident. Rodriguez also spoke with Murad and Milad Murad, Pinheiro, Israel de La Rosa, and Sergio Barragan. Sedano told Rodriguez that Pinheiro told him "suck my dick." Sedano also told Rodriguez that he told Pinheiro he did not get the Mitsui Seiki because he used seniority since the NLRB was "after us."

Rodriguez questioned Barragan about what Pinheiro said to Sedano as part of her investigation of the incident. According to Barragan, he told Rodriguez exactly what happened.

On about Wednesday, October 8, Rodriguez questioned Pinheiro about his comment to Sedano. Pinheiro told Rodriguez "I never told Miguel Sedano to do anything. Basically, what I said was that it was just something that I said to myself out of frustration." Pinheiro did not believe that he actually repeated either the phrase "suck dick" or "suck my dick" to Rodriguez. By telling Rodriguez he never told Sedano to do anything, he was attempting to tell her that he

did not say to Sedano, “suck my dick.” In any event, Rodriguez told Pinheiro she would speak to employee witnesses as part of her investigation. Rodriguez was not involved in the decision to suspend or terminate Pinheiro.

Later on October 8, Pinheiro was suspended pending investigation. The disciplinary action notice stated, in part,

> On 10/6/03 there was a problem between Miguel Sedano and you. Your actions and comments are considered an act of insubordination. At this time we have taken the determination to suspend your working activities until further notice, pending our investigation. Reference Employee Handbook, page 14 -15.

In the meeting with Bechtol and Rodriguez when Pinheiro was given the suspension notice, he protested that the suspension was unfair because he had not been given any warnings. Pinheiro understood that the handbook required two verbal warnings, a written warning, suspension and then discharge.

Dave Bechtol testified that he received Rodriguez’ report regarding investigation of the Sedano/Pinheiro incident. After reviewing it, he determined that Pinheiro should be discharged. “There has got to be respect for your supervisors and if you have no respect for supervision, there is - - how can you get anything done in a shop? I find it absurd we are even talking about it.” Slater testified that in approving Pinheiro’s discharge, he relied on the human resources investigation report in which Pinheiro admitted to Rodriguez that he swore at his supervisor.

A separation report was issued on October 16, signed by Dave Bechtol. Pinheiro was advised of his discharge on October 17. The separation report stated that Pinheiro was dismissed due to insubordination and violation of established company rules. The details section stated:

> Termination – On 10/6/03 you cussed out your supervisor, Miguel Sedano. This is considered an act of insubordination. Reference Employee Handbook pages 14-15. You have a poor work record and this misconduct cannot be tolerated. You have 5 days to pick up your toolbox. After 5 days, Allied Mechanical assumes no liability.

Other employees have been disciplined or discharged for use of profanity. For instance, janitor Willie Martin was discharged in June 2003 for yelling, screaming, swearing, threatening, spitting on, and shouting obscenities to his supervisor. Machinist Jesus A. Viramontes was disciplined in December 2001, for screaming at his supervisor Eddie Rogers, “fuck you.” Viramontes still works for Respondent. Slater testified that Viramontes was not discharged first, because Slater suspected supervisor Rogers had something to do with agitating Viramontes, and second, because Respondent was backed up on welding and Viramontes was a very good, productive welder. Terminating Viramontes would have had a “negative effect on the Company.” Additionally, Slater agreed that supervisor Rogers had altercations with people from time to time.

Employee Dennis Scott was involved in a verbal altercation with another employee in March 2003 and received a disciplinary action notice. He had a physical altercation with another employee in April 2003 and attempted to choke him. Scott was given a choice of taking anger management courses or being terminated. He resigned but eventually took the courses and is now reemployed. Indeed, in 2002, Slater thought

Pinheiro threatened to kill another employee but did not terminate him because of production pressures. Finally, employees Vikas Sharma and Juan Cortes have been disciplined for drinking on company premises but still work for Respondent.

b. Analysis

Sedano's statement that Pinheiro was denied overtime due to unfair labor practice problems experienced by Respondent reasonably tended to restrain, coerce, and interfere with employees' Section 7 rights. See, e.g., *Webco Industries,* 327 NLRB 172, 173 (1998)(employer violates Section 8(a)(1) when it takes adverse action against employees and falsely blames its action on the union).[13]

Pinheiro's Union activity, Respondent's knowledge of his Union activity, and Respondent's animus regarding the activity have been amply documented. Further evidence of animus is supplied by Sedano's unlawful explanation of the use of seniority to determine job assignment. A link or nexus to the discharge of Pinheiro is provided by Sedano's comment about unfair labor practice proceedings requiring that the company follow the employee manual now and utilize seniority in awarding work. The Union previously filed the very unfair labor practice charges regarding treatment of Pinheiro and others, leading Sedano to state that he had to utilize seniority. Respondent has not shown that it would have discharged Pinheiro in any event. It has tolerated actions similar to Pinheiro's and worse.

Respondent contends that Pinheiro's use of profanity to his supervisor constitutes activity that removes Pinheiro from the protection of the Act. Contrary to Respondent's assertion, I find that Pinheiro's statements did not remove him from the protection of the Act. The offending part of the discussion was held in Sedano's office, away from other employees. Berragan overheard Pinheiro's comment only because he was walking into Sedano's office. The subject matter of the discussion, Pinheiro's assertion that he was denied overtime, pertains to wages, hours, and terms and conditions of employment. In response to Pinheiro's assertion that he had been denied overtime, Sedano unlawfully claimed that because of problems with the NLRB, Respondent had to follow seniority in awarding overtime. Finally, Pinheiro's statement, either "suck dick" or "suck my dick," uttered in frustration, was clearly within the ambit of other profanity used on the work floor by and to supervisors. Under these circumstances, Pinheiro's language did not remove him from the protection of the Act. See, generally, *Atlantic Steel Co.,* 245 NLRB 814, 816 (1979).

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[13] Respondent claims that the independent Sec. 8(a)(1) allegation regarding Sedano's statement to Pinheiro was improperly added during the course of the trial. The charge in Case 31-CA-26605 was filed on December 11, 2003. The first amended charge alleges, inter alia,

> The [Respondent] violated Section 8(a)(3) and 8(a)(4) by indefinitely suspending employee Marcelo Pinheiro without pay on or about October 8, 2003, and by discharging him on or about October 17, 2003, in retaliation for his union-related activities and for the testimony he gave at the trial [before Judge Parke]. By the above and other acts, [Respondent] interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

I find that the independent Sec. 8(a)(1) allegation is closely related to the allegations in the charge and occurred within 6 months of the filing of that charge.

Thus, pursuant to *Wright Line's* shifting burden of proof, I find that a preponderance of the credible evidence supports a finding that Pinheiro was suspended and discharged, in part, for his Union and NLRB activity. Moreover, I find that absent such activity, he would not have been suspended and discharged. Additionally, I find that Pinheiro's statements did not remove him from the protection of the Act.

C. Discipline of Edwin Shook

1. Facts

Edwin Shook worked as a maintenance mechanic for about nine years. On February 16, 2004, he became maintenance supervisor. Shook's job as maintenance mechanic was to fix machines, troubleshoot, repair electrical and mechanical problems, and conduct preventive maintenance.

Shook was involved in the Union campaign in early January. He handed out flyers on about 5 occasions in front of the shop, went to Union meetings, wore Union buttons and a Union T-shirt occasionally. Miguel Sedano observed Shook passing out flyers before the day shift, in front of the building. Shook also posted flyers in the plant. On one occasion, Shook saw Dave Bechtol remove a union flier. Shook spoke to Bechtol and told him that he should not be taking down the Union flyers. Bechtol asked why and Shook responded that it was illegal to remove the Union literature. Bechtol stated that it was not illegal because the flyers were posted on company property and Respondent could have whatever it wanted posted on its own property.

Joe Garcia, maintenance supervisor prior to Shook, warned Shook that he should not talk to other employees during work time. Shook saw employee John Saenz speak to another employee during work time. Shook spoke to president Slater about the situation. Shook had seen Saenz wearing a "Vote No" T-shirt and speaking with Respondent's labor consultants. Shook told Slater that he did not think Respondent was treating him fairly because of the Union. Slater merely said, "okay" in response. Shook testified at the hearing before Judge Parke.

On December 18, at 4:15 p.m., Shook asked Garcia if he could leave work early because he was not feeling well. Garcia said Shook would have to stay because Garcia had to leave early. Shook went into the office and read a newspaper during the remaining 15 minutes of his shift. While so engaged, Slater entered the office and asked about a machine. Shook answered Slater's question and Slater left. Slater did not say anything to Shook about Shook reading a newspaper on work time. Shook left work at 4:30 p.m. when his shift ended. Judge Parke's decision issued the following day, December 19.

On January 5, 2004, Shook received a disciplinary notice from Joe Garcia stating that Slater had observed Shook reading a newspaper during work time at 4:15 p.m. on December 18. Garcia told Shook he did not personally agree that the disciplinary notice was warranted. The notice stated, in relevant part:

> This is a violation of work rule number seven as stated in the Allied Mechanical Employee Handbook, "The use of Company time, material, or facilities for purposes not directly related to Company business, or the removal of Company property from the Company premises without authorization." Joe Garcia, Maintenance Supervisor, has verbally warned you on several occasions regarding the misuse of Company time.

Shook signed the notice and wrote at the bottom, in part, "This is clearly an attempted first step towards an unfair dismissal due to my union involvement. There are many employees reading papers and magazines here who do not get written up." Shook also testified that other employees read newspapers during work time. Dave Bechtol agreed. "Oh, unfortunately too often [do I catch somebody reading a newspaper]. Probably a couple of times a month." Bechtol has always given verbal warnings by telling the employees to put away the paper and warning them they are not supposed to be reading a newspaper. In agreement, Sedano testified that he sees employees reading a newspaper almost everyday. He tells them to stop reading. Shook is the only employee to receive a written disciplinary action notice for reading a newspaper on work time.

2. Analysis

Shook's open Union activity and his testimony before Judge Parke were known by Respondent. Respondent's animus toward employee union activity has been documented *supra.* No other employee has ever received written discipline for reading a newspaper. This disparate treatment of Shook serves as a link or nexus to Shook's Union activity and testimony before the Board. The long delay in issuing the written disciplinary action notice is suspect as well. Respondent has failed to show that Shook would have received written discipline in any event. No other employee has ever received written discipline for this behavior. Respondent's defense is that because the written discipline has been removed from Shook's personnel file and because Shook and Respondent have requested that this charge be withdrawn, it would not effectuate the purposes of the Act to treat discipline of Shook as an unfair labor practice. However, I find to the contrary. Once an unfair labor practice charge is filed, the General Counsel has an independent responsibility to refuse permission to withdraw a charge if withdrawal would not effectuate the purposes of the Act. Although Shook and Respondent may have requested withdrawal of the allegation, the matter was no longer one for vindication of a private right. Moreover, I note that Respondent did not admit any wrongdoing when it removed Shook's written discipline from his personnel file. Accordingly, I find that a preponderance of the credible evidence supports a finding that Respondent issued a written disciplinary warning to Shook on January 5, 2004, because of Shook's Union and NLRB activity, in violation of Section 8(a)(1), (3), and (4) of the Act.

D. Implied Threat of Relocation and Implied Inducement to Forego Union Support

1. Facts

About one month after Judge Parke's decision issued, Respondent distributed a letter to all employees dated January 12, 2004, signed by owner Tom Stull. In relevant part, the letter stated:

> We also want to update you on the union situation. We have maintained that we can be more competitive in this industry as a non-union company. The majority of those employees who voted last March agreed with us. However, the National Labor Relations Board has made a decision that we must negotiate with the union, despite the majority of employees against union representation. We support the majority vote and will vigorously appeal the NLRB decision to protect your voices on the issue and our ability to compete. While our appeal is being considered, we will continue to make the best decisions for the company's future. I think that it is important to stress that no matter what side of the union issue you're on, we must work together in this difficult business environment to improve company productivity and profitability.

The letter asserted that Respondent's sales and productivity had decreased while costs had increased. It noted the dramatic 600% rise in workers compensation costs, pointing out that California has the highest premiums in the nation and the lowest amounts paid to injured workers, concluding that the entire California workers compensation system needed an overhaul. The letter warned, "Many businesses have given up and are moving out of State to avoid the problem."

The letter outlined Respondent's rising health and dental insurance costs, noting, "we are hearing of cost increases of 10-15% for similar plans. The letter asserted that rising electric rates in California were 2.3 times higher than Arizona and 1.6 times higher than Nevada. The letter stated, "While many business owners say that they would never start a new manufacturing company in the State of California, others are looking for a way out."

2. Analysis

General Counsel contends that the letter, issued shortly after Judge Parke's decision, contains an unlawful implied, not express, inducement of its employees to forego Union support and an unlawful implied, not express, threat of relocation. General Counsel argues that the *Gissel*[14] analysis, "whether the employer's statement constitutes an unlawful threat of retaliation in response to protected activity, or a lawful, fact-based prediction of economic consequences beyond the employer's control" must be applied. Respondent contends there are no threats of reprisal or force or promises of benefits. Thus, *Gissel* does not apply.

The letter does not specifically state that Respondent will leave California if the NLRB upholds Judge Parke's decisiono and it is ordered to bargain with the Union. There is no express threat to relocate and none is alleged. Respondent states that it believes it would be more competitive as a non-union company. Respondent also notes that the high cost of doing business in California has deterred companies from locating in the State and forced others to consider leaving. There is no prediction contained in the letter. Nor is there an implication that Respondent "may or may not take action solely on his own initiative for reasons unrelated to economic necessities and know only to him." *Gissel, supra,* 395 U.S. at 618. Accordingly, no implied threat of relocation and implied inducement to forego Union support is contained, even considering Respondent's other unfair labor practices. See, e.g., *Enjo Architectural Millwork,* 340 NLRB No. 162 (2003), slip opinion at 2, relied upon by Respondent.

Conclusions of Law

1. By telling an employee that its conduct was discriminatorily motivated, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By denying Pinheiro a transfer to the night shift, issuing a written disciplinary notice to Pinheiro, denying Pinheiro overtime, suspending and discharging Pinheiro, and by issuing a written disciplinary notice to Shook, Respondent violated Section 8(a)(1), (3), and (4) of the Act.

[14] *NLRB v. Gissel,* 395 U.S. 575, 618 (1969).

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Having discriminatorily denied a transfer to the night shift, denied overtime, and suspended and discharged Pinheiro, Respondent must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[15]

ORDER

Respondent, Tower Industries, Inc. d/b/a Allied Mechanical, Ontario, California, its officers, agents, successors, and assigns, shall

1. Cease and desist telling an employee that its conduct was discriminatorily motivated, and denying transfer to the night shift, issuing written disciplinary notices, denying overtime, suspending and discharging any employee for assisting the Union and/or engaging in concerted activities, and for testifying before the NLRB, or in any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

   a. Within 14 days from the date of the Board's Order, offer Marcelo Pinheiro full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

   b. Make Marcelo Pinheiro whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the Decision.

[15] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

c. Within 14 days from the date of the Board's Order, remove from its files any reference to Pinheiro's unlawful denial of transfer to the night shift, written disciplinary action, denial of overtime, suspension and discharge, and Shook's written disciplinary action, and within 3 days thereafter notify the employees in writing that this has been done and that the denial of transfer to the night shift, written disciplinary action, denial of overtime, suspension and discharge will not be used against them in any way.

d. Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

e. Within 14 days after service by the Region, post at its facility in Ontario, California, copies of the attached Notice marked "Appendix."[16] Copies of the Notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where Notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the Notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the Notice to all current employees and former employees employed by the Respondent at any time since mid-August 2003.

f. Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated: July 15, 2004
San Francisco, California

Mary Miller Cracraft
Administrative Law Judge

[16] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT tell any of you that you were denied overtime because we have to use seniority in assigning overtime since we got into trouble with the NLRB.

WE WILL NOT deny transfer to the night shift, discipline, deny overtime, suspend, discharge or otherwise discriminate against any of you for supporting United Steelworkers of America, AFL-CIO-CLC.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Marcelo Pinheiro full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Marcelo Pinheiro whole for any loss of earnings and other benefits resulting from his denial of transfer to the night shift, denial of overtime, suspension, and discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful denial of transfer to the night shift, disciplinary notice, denial of overtime, suspension and discharge of Marcelo Pinheiro, and the unlawful disciplinary notice to Edwin Shook, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the unlawful denial of transfer to the night shift, disciplinary notices, denial of overtime, suspension and discharge will not be used against them in any way.

TOWER INDUSTRIES, INC. d/b/a
ALLIED MECHANICAL

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

11150 West Olympic Boulevard, Suite 700, Los Angeles, CA 90064-1824

(310) 235-7352, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (310) 235-7123.